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CIVIL LAW ISSUES

BOCZAR v. REUBEN, No. 49A04-0010-CV-417, ___ N.E.2d ___ (Ind. Ct. App. Feb. 9, 2001). BAKER, J.

The Boczars counter that, regardless of whether 4821 North Meridian Street was their dwelling house, Reuben failed to follow the procedural dictates of T.R. 4.1(B). Subdivision (B) of the trial rule provides that if service was made by leaving a copy of the summons and complaint at the dwelling house, then the person making the service "shall also send by first class mail, a copy of the summons without the complaint." T.R. 4.1(B) (emphasis supplied). The Boczars assert, and Reuben does not dispute, that a separate summons was not mailed to them. [Citation to Brief omitted.] . . .

The Boczars, citing Barrow v. Pennington, argue that Reuben's failure to comply with T.R. 4.1(B) prevented the trial court from ever acquiring personal jurisdiction over them. 700 N.E.2d 477 (Ind. Ct. App. 1998). In Barrow, a sheriff allegedly delivered a summons and complaint to Barrow's home and left them with his babysitter. Id. at 478. However, Barrow had no children and did not employ a babysitter. Id. Eventually, the trial court entered a default judgment against Barrow. On appeal, Barrow argued that the service of process did not comport with the dictates of T.R. 4.1(B) because a separate summons was not mailed to his last known address, and, therefore, the trial court never acquired personal jurisdiction over him. This court agreed and held that "T.R. 4.1(B), itself, is a jurisdictional prerequisite to obtaining personal jurisdiction." Id. at 479. In other words, "service of process in contravention of T.R. 4.1(B) is not sufficient to confer personal jurisdiction over a defendant." Id.

However, the exigencies compelling the Barrow holding are absent here. First, no one disputes that the Boczars received the complaint and the summons. The Boczars quibble, "There is no evidence in the record that the Boczars were ever served. However, the Boczars do not contend that there was no service . . . ." Appellants' brief at 7 (emphasis supplied). Second, the Boczars do not argue that they were prejudiced by Reuben's failure to send the separate summons by mail. Finally, unlike the Barrow court, we are not presented with an appeal of a default judgment. . . .

. . . Here, the purpose behind T.R. 4.1(B)—the requirement to mail an additional summons separately after leaving a copy of the complaint and summons at the dwelling place—is to increase the odds that the served party will receive timely notice of the suit. The Boczars had timely notice of the suit initiated against them. Under the circumstances here, to require the mailing of a separate summons would neither further T.R. 4.1(B)'s purpose nor secure the just determination of this action. Therefore, despite Reuben's failure to mail the separate summons, the trial court acquired personal jurisdiction over the Boczars.

. . . .

BARNES and BROOK, JJ., concurred.

GARDNER v. YRTTIMA, No. 41A01-0008-JV-282, ___ N.E.2d ___ (Ind. Ct. App. Feb. 8, 2001).

KIRSCH, J.

Jeffrey Gardner appeals the trial court's denial of his petition to modify child support and presents an issue of first impression: whether an inheritance should be included in weekly gross income for purposes of determining child support obligations.

We affirm.

. . . .

Based upon Yrttima's history of non-compliance with the child support order, on September 21, 1999, the trial court granted Gardner's motion to attach $10,000 of Yrttima's inheritance as security for future child support payments. On March 2, 2000, the State on behalf of Gardner filed a Petition to Modify Support Order, contending that due to a change in circumstances the thirty-dollar per week child support order was no longer reasonable. After conducting a hearing on the motion, the trial court denied the petition to modify. In its ruling, the trial court specifically stated that it declined "to find that inheritance received by [Yrttima] should be calculated as current income." [Citation to Record omitted.] . . .

. . . .

[W]e begin by looking to other states for guidance. Recently, in *Goldhamer v. Cohen*, 525 S.E.2d 599, 603 (Va. Ct. App. 2000), the Virginia Court of Appeals held that because inheritance is a gift and Virginia's definition of gross income for purposes of child support includes gifts, an inheritance should likewise be considered in calculating child support. . . .

. . . .

A further review of case law reveals that other states also consider an inheritance as income available for purposes of calculating child support. [Citations omitted.]

. . . .

Similarly, other states do not consider a lump-sum inheritance as income for purposes of child support, but instead include only income that an inheritance may create or income that may otherwise be imputed based upon the principal amount of the inheritance or on the interest the inheritance otherwise could have earned. [Citations omitted.]

. . . .

Notably, inheritance is not specifically mentioned in Child Supp. G. 3(A)(1), but gifts are specifically included in gross income. . . . For purposes of child support calculation, we can discern no appreciable difference between one who receives property by an inter vivos gift and one who receives the same or similar property by testamentary transfer, nor can we discern a logical reason to include one and exclude the other. Accordingly, we conclude that an inheritance should be considered in determining gross income for purposes of the Indiana Child Support Guidelines.

This conclusion, however, does not end our inquiry. . . . Thus, while the trial court should consider an inheritance in determining gross income, the ultimate effect of the receipt of an inheritance on the determination of child support lies within the sound discretion of the trial court. In one case, the inheritance may in and of itself constitute a change in circumstances sufficient to justify a modification of a prior support order. In another, it may have no effect on the child support determination.

Further, if the court excludes an inheritance from gross income, it may nevertheless consider the inheritance in determining child support. . . . An inheritance may change a non-custodial parent's ability to pay child support. For instance, an inheritance may be used to reduce a non-custodial parent's debt, thereby increasing the parent's overall standard of living.

The nature and use of the inheritance should also be considered in determining child support. Where an inheritance is in the form of cash or securities and is placed in income-

generating assets, the interest, dividends, or other income from such assets should be included in gross income for purposes of determining child support. Where a parent opts to place some or all of an inheritance in non-income producing assets, the court may consider whether it is appropriate to impute income to the parent. Not all such choices should support such imputation. It may be appropriate and equitable and in the best interests of the child for a parent who inherits a family heirloom to retain that heirloom without affecting the child support obligation.

In summary, our reading of the Guidelines and the authorities addressing the issue of whether an inheritance is income for purposes of calculating child support leads us to the following conclusions: First, for purposes of modification an inheritance may amount to a substantial and continuing change in circumstances sufficient to trigger a modification of a child support order. Second, the principal amount of the inheritance should be considered by the trial court in determining gross income for purposes of calculating child support. Third, the court may exclude the inheritance from its determination of gross income where sound reasons exist. Fourth, the effect of the inheritance on the financial circumstances and net worth of the parent may be considered in determining whether the court should deviate from the Guidelines in determining child support. Fifth, the interest, dividends, or other return on the investment of the inheritance is income. Finally, if a parent places the inheritance in non-income producing assets, a trial court may also consider the inheritance in determining whether income should be imputed to the parent for purposes of child support.

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NAJAM and VAIDIK, JJ., concurred.

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